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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,935	03/23/2004	Claire Svetlana Vishik	8285-676	2854
757	7590	02/09/2005	EXAMINER	
BRINKS HOFER GILSON & LIONE			HOOSAIN, ALLAN	
P.O. BOX 10395			ART UNIT	PAPER NUMBER
CHICAGO, IL 60610			2645	

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/806,935	VISHIK ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Allan Hoosain	2645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 23 March 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-18 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/9/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

**DETAILED ACTION**

***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-18 are rejected under the judicially created doctrine of double patenting over claims 1-20 of U. S. 6,735,287 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

US 6,735,182, recites limitations which are substantially the same and broader in scope as recited in the claims of the instant Application. For example, US 6,735,182, Claim 1, Steps (a)-(c) are the same as Steps (a)-(c) of Claim 1 in the instant application.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-5,10-14 are rejected under 35 U.S.C. 102(e) as being anticipated by **Bergl et al.** (US 6,246,751).

As to Claims 1,10, with respect to Figure 1, **Bergl** teaches a method comprising:

(a) providing a presence device, 12 and 14, associated with a communication device, 28, the presence device operable in a biometric (first) mode and a non-biometric (second) mode;

(b) if the presence device is operating in the first mode, biometrically authenticating a user using the presence device and receiving a presence confirmation input from the communication device (Figure 2, label 102,106 and Col. 5, lines 40-52); and

(c) if the presence device is operating in the second mode, receiving a user-entered login input from the communication device and authenticating the user entered login input (Col. 5, line 64 through Col. 6, line 5).

As to Claims 2-5,11-14, **Bergl** teaches the method of claim 1 wherein the communication device comprises a telephone, and wherein said biometrically authenticating comprises authenticating a voice of the user during a call using the telephone (Figure 2, label 104).

5. Claims 1,8,10,17 are rejected under 35 U.S.C. 102(e) as being anticipated by **HackbARTH et al.** (US 2002/0143877).

As to Claims 1,8,10,17, with respect to Figures 5-9, **HackbARTH** teaches a method comprising:

(a) providing a presence device associated with a communication device the presence device operable in an image (first) mode and a login (second) mode (Figure 5, labels 503,504 and Figure 9, labels 907,429);

(b) if the presence device is operating in the first mode, biometrically authenticating a user using the presence device and receiving a presence confirmation input from the communication device (Figure 9, label 908); and

(c) if the presence device is operating in the second mode, receiving a user-entered log-in input from the communication device and authenticating the user entered login input (P0065-P0068).

As to Claims 8,17, **HackbARTH** teaches the method of claim 1 wherein the presence device is embedded with the communication device (Figures 1 and 9).

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Matsumoto et al.** (US 2001/0025314) teach a presence device which uses ping signals to determine presence of users.

7. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231  
**or faxed to:**

(703) 872-9314, (for formal communications intended for entry)

**Or:**

(703) 306-0377 (for customer service assistance)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Allan Hoosain** whose telephone number is (703) 305-4012. The examiner can normally be reached on Monday to Friday from 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Fan Tsang**, can be reached on (703) 305-4895.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

*Allan Hoosain*  
**Allan Hoosain**  
**Primary Examiner**  
**2/3/05**